

Weber River Water Rights Committee

2837 EAST HIGHWAY 193 • LAYTON, UTAH 84041

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MAR 25 1993

March 23, 1993

WATER RIGHTS
SALT LAKE

Mr. Robert L. Morgan
Utah State Engineer
1636 West North Temple
Salt Lake City, Utah 84116

Dear Mr. Morgan:

Attached are letters our Committee has sent to you, Central Utah Project and the Bureau of Reclamation. We are forwarding copies to keep you informed of the potential problem areas dealing with diversion of water from the Weber River system across the Weber-Provo Diversion into the Provo River for possible benefit of the Central Utah Project in providing storage water for the new Jordanelle Dam and Reservoir. Over the past several years many of the reservoirs on the Weber River system have not filled due to shortage of water from the Weber River drainage. To even consider any further diversions for the benefit of the CUP from the Weber River system would be devastating to users of the Weber River.

Since many of the water projects on the Weber River are Bureau projects and have been constructed with taxpayers money, to consider diversions that would jeopardize their water supply for a new, very expensive project also constructed with taxpayers funds would be disastrous. We have always been supportive of the CUP and will continue, but we must take whatever action is necessary to prevent further diversion from the Weber River.

At this time we are notifying you of our concerns, and hopefully there will be some satisfactory agreements between the Bureau, CUP, Provo River Water Users Association, and the Weber River Water Rights Committee that will be satisfactory and protect the concerns of all. We will keep you informed of further developments as they arise.

Yours truly,



Charles F. Black Jr.
Chairman

CFB/sm
encl.

Weber River Water Rights Committee

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WATER RIGHTS
SALT LAKE

Roland Robison
Regional Director
Bureau of Reclamation
125 South State Street
P.O. Box 11568
Salt Lake City, Utah 84111

RE: Weber River/Provo River Issue

Dear Mr. Robison:

This letter is being sent on behalf of and at the direction of all members of the Weber River Water Rights Committee (the "Rights Committee"). The intent of this letter is to express strong objection to the intended modification of the operating criteria of the Provo River Project, specifically the storage in Deer Creek Reservoir. Specifically, the concern of the Rights Committee is the significant adverse effect of any such change in operation on the Rights Committee members, particularly, but not limited to the Weber Basin Water Conservancy District. At a meeting conducted by the Bureau on March 15, 1993, it became evident that the proposed revision to the operating criteria for the Provo River would radically and seriously alter the historic operation of the Weber River diversions and, as a result, seriously and adversely affect the Weber River system by accelerating and increasing the diversions of water from the Weber River into the Provo River system.

In prior communications to both the Utah State Engineer and the Central Utah Water Conservancy District, the Rights Committee has expressed these concerns in general terms. (See attached letters.) It is now evident from the meeting and the proposal discussed on March 15, that there are specific questions which must be answered by the Bureau as the sponsor and contracting officer for all of the federal reclamation projects involved in this issue. It is the position of the Rights Committee that at the time of the development and authorization of the Weber Basin Project and the Provo River Project, it was never contemplated in the documentation referred to at the meeting, that there would be what can be characterized as nothing more than an exchange or transfer of Provo River Project water to support the Central Utah Project at the expense of the Weber Basin Project. Statements were made at the

Bureau of Reclamation

meeting reciting language and definite plan reports dating back to 1951 in an attempt to imply some apparent clairvoyant conclusion that the Central Utah Project exchange contemplated today was authorized in 1951. This is not so. It appears that the Bureau has been placed in a very difficult position and, as a result, is placing the project sponsors relying on Bureau projects in a much more difficult position. The Bureau cannot take any such actions which would abrogate the sponsors' federal contractual rights or impair the related water rights on the Weber Basin Project.

It is obvious in the history and chronology that the basic water rights upon which this "exchange" is relying have their roots in early filings by the State of Utah which were later assigned to the Bureau for use in the Provo River Project. Nothing in any of those filings can be read to imply approval of the proposed exchange with the Central Utah Project. It is obvious that those filings were only dealing with the development of the Provo River Project and never contemplated an exchange or transfer of water to the then authorized and undefined Central Utah Project at the direct expense of the Weber Basin Project.

The Rights Committee is not disputing the right of the Bureau to utilize waters from the Provo, Duchesne and Weber Rivers as they have historically done with the facilities in existence at the time of the proof. However, the Rights Committee disputes any claim of a unilateral right to defer the taking of water from one source in exchange for increasing or exchanging the delivery of water from another source. Quite simply, cutting through all of the rhetoric, the plan is to defer or exchange taking Provo River water which historically filled Deer Creek and allowing the Central Utah Project to store such flows in exchange for increasing the historic amount of water necessary or needed by the Provo River Project from the Weber River. If this were not so, why would the Central Utah Project sponsor invest significant funds in the modification of the new diversion facilities?

Any characterization of maximizing the delivery of Weber Basin water, flows as the federal rationale or justification for such an exchange and deferral of delivery, is beyond the scope of both the Provo River Project water rights and the jurisdiction of the Bureau. A more simple and direct way to state this is, but for the intervening event of Jordanelle Reservoir storage, the delivery of water to the Deer Creek Reservoir would continue to first come from water available out of the Provo River which would otherwise flow past Deer Creek and downstream and then to the extent necessary, diversion of Duchesne and Weber River water to augment and supplement those flows to allow Deer Creek Reservoir to fulfill its

storage rights. It is interesting to note here that even in the recent years of severe drought, there has never been a shortage of water to the Deer Creek Reservoir storage and, indeed, last year Deer Creek Reservoir spilled without altering the historical available water delivery from the Weber River.

Another major concern expressed at the March 15 meeting and in the prior letters is the question of jurisdiction over such a proposed exchange by the Office of the State Engineer. There is no evidence that the State Engineer has approved the proposed exchange of storage between the two reservoirs at the expense of Weber Basin. To argue that this is not an exchange, but merely a management agreement is not consistent with Utah water law. It is fundamental that a water right authorizes a holder to store water only in facilities contemplated at the time of the issuance of the water right approval. If the Bureau desires to propose such an exchange, it must come under the jurisdiction of the State Engineer's office with his powers to review and prevent any adverse effects on other water right users. By any other name, the authorization to store water in another reservoir, in exchange for increasing water storage from another source, is simply and truly an exchange. The Bureau, as the federal trust agency for the Weber Basin Project, as well as the other affected projects, must govern its actions in a way that does not breach its trust duties to its sponsors in these projects. The Bureau has an affirmative duty to protect the viability of the Weber Basin Project.

Another concern of the Rights Committee which has not been discussed and will only be mentioned here is the apparent lack of compliance with federal environmental law in this proposal. There has been no presentation or representation that any environmental analysis has occurred in compliance with the National Environmental Policy Act of 1969. The Rights Committee is unaware of any analysis of potential environmental effects of such a proposal or any environmental studies or public involvement which is clearly required under the National Environmental Policy Act. One obvious significant environmental impact of such a proposal is its adverse effect upon the water users and economy of the Weber River system. Furthermore, the development and operation of the Central Utah Project is an independent action of both the United States and now the Central Utah Water Conservancy District, which must now operate as a "federal agency". The execution of any agreements which modify the delivery of water by either the Bureau or the District are federal actions which require compliance with the applicable federal environmental laws.

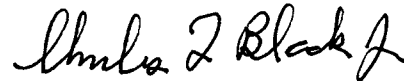
The Rights Committee and its members are extremely frustrated by being presented such a dramatic alteration of water flows with

Bureau of Reclamation
March 23, 1993
Page 4

such short notice and with the rather cavalier attitude by the Bureau toward other affected water users. The Bureau bears a public trust duty to carefully and deliberately inform and consider effects upon all of its sponsoring entities and all of the parties its decisions will affect. To develop what appears to be a rather unilateral and narrowly focused policy without informing, consulting or considering the parties directly affected by such a proposal, is in the opinion of the Rights Committee totally improper. Based on information made available by the Bureau, the actions proposed are in violation of the contract obligations to the Weber Basin Water Conservancy District.

Sincerely,

WEBER RIVER WATER
RIGHTS COMMITTEE

A handwritten signature in cursive script, appearing to read "Charles F. Black".

Charles F. Black
Chairman

CFB/sm
encl

cc: Robert L. Morgan, Utah State Engineer

Weber River Water Rights Committee

DATE SENT

FEB 08 1993

2837 EAST HIGHWAY 193 • LAYTON, UTAH 84041

February 4, 1993

Mr. Robert Morgan
Office of the State Engineer
1636 West North Temple
Salt Lake City, Utah 84116

RE: Expansion of Weber-Provo Diversion Facilities by Provo River
Water Users Association

Dear Mr. Morgan:

This letter is written by the Weber River Water Rights Committee (the "Committee"), which has been authorized by its members to submit this letter on their behalf, because of the concern about the proposed utilization of the newly installed Weber River-Provo River diversion facility which was recently constructed by the Provo River Water Users Association (the "Association"). As you know, we have met with your office and with the Association on this matter and voiced our strong concern regarding the potential for an increased diversion of water from this new facility, radically departing from past historical diversions.

It should be stated up front that the Committee and its members do not dispute the right of the Association to divert what it has historically diverted for the Provo River Project, including storage of water in Deer Creek Reservoir. The Committee, however, seriously objects to action by the Association to significantly increase its diversion based on the water rights held by the Association or the Bureau of Reclamation. It is the position of the Committee that the authorization for the special appropriation under Utah Code Ann. §§ 73-3-16 and 17 is limited to the amount of water placed to beneficial use through the facilities constructed at the time proof was submitted, and the capacity of the system, including storage facilities, cannot now be expanded or modified to increase diversion therein allowing an open-ended increase which will interfere with other vested water rights. It is obvious that even in times of drought, there have been sufficient flows under the current diversions to fill the Deer Creek Reservoir. Last year is a prime example wherein, after five years of subnormal snowpack, Deer Creek Reservoir, diverting again only its historic amount of water from the Weber system, was full and, in fact, spilling.

Also, it is imperative from the Committee's point of view that there is no utilization of water diverted by the Association, either directly or indirectly, to bolster or enhance the water rights of the Bureau of Reclamation's Central Utah Project to the

Mr. Robert Morgan
February 4, 1993
Page 2


detriment of the Association or its members. The Jordanelle Reservoir, and any relationship of storage in the Jordanelle Reservoir to the Provo River Project, was clearly not contemplated under the original water rights for the Provo River Project. It would seem to the committee that any contemplated increase in Weber River Diversions could only be based upon an assumption that there would be an exchange, either directly or indirectly, for the enhancement of the Central Utah Water Conservancy District in filling the Jordanelle Reservoir. The Committee feels that such action would be an illegal expansion of the existing water rights of the Association. It appears to the Committee that any attempt by the Association, the Central Utah Conservancy District or the United States Bureau of Reclamation to enhance the ability of the Jordanelle Reservoir to be filled based by increased diversions from the Weber River is a violation of the intent and authorization of the Provo River Project water rights and the Committee, and its members, will take whatever action it deems necessary to protect against such an interference. Further, it is the position of the Committee that any exchange agreement, operating criteria or other formal relationship established between the Association, Central Utah Water Conservancy District and/or the Bureau of Reclamation related to the filling and storage of the Jordanelle and Deer Creek Reservoir storage should be considered a formal action subject to the jurisdiction of the State Engineer requiring appropriate exchange, change or other applicable procedures.

Given these concerns and the clear fact that increased diversions by the Association would radically alter the historic practice of diversions by the Association and, given the fact that such diversion would adversely affect the water rights of the Committee members, particularly of the Weber Basin Water Conservancy District, the Committee respectfully requests your office to impose upon the Association and the United States Bureau of Reclamation a restriction on any increase of diversions from the new facility above the historic diversions.

We earnestly await your response and consideration.

Sincerely,

WEBER RIVER WATER RIGHTS
COMMITTEE


Joseph Dawson
Chairman

JD/sm

Weber River Water Rights Committee

~~DATE SENT~~

2837 EAST HIGHWAY 193 • LAYTON, UTAH 84041

FEB 10 1993

February 10, 1993

Mr. Don Christiansen
General Manager
Central Utah Water Conservancy District
355 West 1300 South
P.O. Box 427
Orem, Utah 84057


RE: Provo River/Weber River Studies

Dear Mr. Christiansen:

I am sending this letter on behalf of the Weber River Water Rights Committee (the "Committee") who, by its membership, represents the majority of the major water right owners on the Weber River Drainage. The Committee is concerned about the intent and scope of the so-called "Provo River Studies" authorized in the Central Utah Project Completion Act (H.R.429). As you know, this act allows these studies to "evaluate the potential for changes in the existing importation patterns and quantities of water from the Weber and Duchesne River Basins," (Section 202.(a)(5)(ii)). Obviously, any such study must take into account and identify the existing water rights and water use patterns in the Weber River drainage. It is the position of the Committee that such a study clearly acknowledge and recognize the existing water rights, including those held by Weber Basin Water Conservancy District and any study conducted under this section must be predicated on the assumption that there will be no interference, reduction or change in the water delivery and water rights on the Weber River system. Further, it is obvious that any such studies should include participants from, and have constant consultation with, the Weber River water right owners.

By this letter, we are requesting a meeting with you as soon as possible to discuss the format, intent and scope of such studies prior to the initiation of any such effort by the District in order to assure that the existing water rights on the Weber River system are not impaired or adversely affected.

Sincerely,


Joseph Dawson
Chairman

JD/sm

cc: Robert L. Morgan